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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/277,074 | 03/26/1999 | LINDA A. SHERMAN | TSR1433.1DIV | 3068 |

7590 04/20/2004

THE SCRIPPS RESEARCH INSTITUTE
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EXAMINER

DAVIS, MINH TAM B

| ART UNIT | PAPER NUMBER |
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1642

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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EXAMINER

ART UNIT

PAPER

20040413

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Commissioner for Patents

SEE ATTACHED.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Applicant's submission filed on **01/30/04** has **not** been entered for the following reasons:

Claim 1 was amended from a method claim presently under prosecution, to a composition claim, which is not the originally elected invention. The composition and the method claims are independent and distinct as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (i) the process for using the product as claimed can be practiced with another materially different product or (ii) the product as claimed can be used in a materially different process of using that product [see *MPEP* § 806.05(h)]. In the instant case the polypeptide product as claimed can be used in a materially different process such as for making antibodies.

As 35 U.S.C. 132(b) and 37 CFR 1.114 provide continued examination of an application (and not examination of a continuing application), the applicant cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions) (see 37 CFR 1.145). See *MPEP*: 706.07(h) VII, new matter and *MPEP* 201.06(b) [R-1]

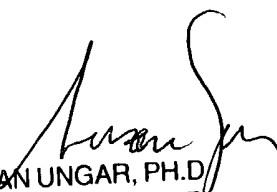
For the reasons set forth above, the request for RCE is improper and is not entered.

Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-TAM DAVIS whose telephone number is 571-272-0830. The examiner can normally be reached on 9:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, YVONNE EYLER can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SUSAN UNGAR, PH.D.
PRIMARY EXAMINER

Application/Control Number: 09/277,074
Art Unit: 1642

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MINH TAM DAVIS

April 16, 2004